

THE HON'BLE SRI JUSTICE P.S.NARAYANA
WRIT PETITION No.6635 of 2007

Dated:11.10.2007

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Between:

M/s.Chaitanya Bharati Constructions.

... Petitioner

and

The Singareni Collieries Co.Ltd.,
and another.

... Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA
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ORDER:

Heard Sri A.Ravinder, learned Counsel representing the writ petitioner, and Sri Nandigama Krishna Rao, learned Counsel representing the respondents.

Sri Ravinder, learned Counsel representing the writ petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and also the contents of the counter affidavit and would submit that in the light of the ratio laid down in **Ramana Dayaram Shetty v. The International Airport Authority of India**^[1], the stand taken by the respondents cannot be said to be a sustainable stand.

Per contra, the learned Counsel representing the respondents had taken this Court through the contents of the counter affidavit and would maintain that in the light of the same, it cannot be said that the petitioner is having any legal enforceable right, and hence, the Writ Petition is liable to be dismissed.

Heard the learned Counsel. The Writ Petition is filed for a writ of mandamus declaring the impugned proceedings issued by the second

respondent vide proceedings dated 20.03.2007 in reference No.CRP/CMC/ST/ENQ.354/2006/13079 as illegal, void and *ab initio*, and for a further direction to the respondents to award the contract to the petitioner's firm in pursuance of the tender documents submitted on 18.01.2007 in the interest of justice on the basis of rate offered by the petitioner's firm and for such other orders as this Court may deem fit and proper in the circumstances of the case.

It is submitted that the petitioner is carrying on its business of transport and other allied business from the year 2001 in the name and style of M/s.Chaitanya Bharati Constructions, travel agencies and transport contractor. The petitioner's firm is a registered firm. It was awarded a contract by the respondents for excavation, loading, transportation and delivery of sand from Godavari Khani to GDK.7 LEP incline for a period of two years commencing from November 2006. The respondents also awarded another contract to it for excavation, loading, transportation and delivery of sand from Godavari Khani to different mines of Srirampur Area (Adilabad District), and the above contracts are still subsisting, which the petitioner's firm is executing to the satisfaction of the respondents' company.

The second respondent called tenders for excavation, loading, transportation and delivery of sand from Godavari Khani to SMG.1 incline. The said tender was initially called in September 2006, and the last date for submission of tenders was fixed as 26.10.2006, and opening date was fixed as 27.10.2006. As nobody filed any tender/bid, the respondents called the second tender and fixed the last date for submission of tenders as 23.11.2006 and tender opening date as 24.11.2006. And again as nobody responded, for the third time, tenders were called and the dates for submission and opening of tenders were fixed as 14.12.2006 and 15.12.2006 respectively, and as nobody chose to file bid, again for the fourth time bid was called and the respondents fixed the last date for submission of tenders as 28.12.2006 and opening of tenders as 29.12.2006,

and as usually, nobody came forward for submitting the tender. Again for the fifth time, the second respondent called tender for executing the above work and fixed the date for submission of tender application as 18.01.2007 and tender opening date as 19.01.2007. The petitioner purchased the tender document on 17.01.2007 and submitted its bid on 18.01.2007 along with the DD of Rs.5,00,000/- drawn in favour of Singareni Collieries Company Limited, Kothagudem, towards EMD by quoting the rate for an amount of Rs.199.99 ps for cubic metre for excavating, loading, transporting and delivering of sand by trucks from river bed to SMG-1 incline bunker/ground and for the second item i.e., ground (re-handling) the petitioner quoted Rs.27/- per cum. It is pertinent to mention herein that the petitioner's firm enclosed along with its tender documents all relevant documents. The second respondent opened the tender/bid on 19.01.2007 and found that only one bid was submitted i.e., the petitioner herein. Other than the petitioner, nobody submitted any bid or tender. Instead of confirming the bid submitted by the petitioner, the second respondent postponed the finalization of the tender. The second respondent by his proceedings dated 26.02.2007 issued a letter to the petitioner's firm, requesting to depute a representative with authorization letter for discussion/negotiations on 28.02.2007 in the office of the second respondent. In the letter, it is also specifically mentioned that the authorized representative should empower to take spot decision and confirm in writing on the same day and he should get all relevant data and work sheet of rates arrived. Accordingly, the representative of the petitioner's firm was authorized to represent the petitioner's firm, who attended before the second respondent and the tender committee meeting was held on 28.02.2007. During the discussion between the tender committee and the representative of the petitioner's firm, the tender committee expressed its opinion that the rate offered by the petitioner's firm was high with reference to the rate fixed by the Industrial Engineering Department (IED), which is a department

under control of Singareni Collieries Limited. After working out the rate, the petitioner's firm offered for the first item an amount of Rs.179/- by reducing earlier quoted rate i.e., Rs.199.99 to Rs.179/- and for the second item from Rs.27/- to Rs.24.50 ps. The petitioner further submits that for the first item the rate offered during the discussion/negotiation is also very low compared to the actual cost incurred by the petitioner's firm. Again the tender committee has not finalized the bid on 28.02.2007 and postponed the matter, and the petitioner further submits that the second respondent again directed it to submit the rate analysis for execution of the tender work. After thorough analysis and with reference to the scope of works and the terms and conditions imposed by the respondents company, the rate analysis was submitted, which was faxed to the second respondent on 14.03.2007 by giving the breakup price of each work, which may incur by the firm during the execution of the contract work. In the rate of analysis the petitioner's firm quoted the rate for execution of work i.e., excavation, loading, transportation and delivering of sand for cubic metre in an amount of Rs.181.78 ps. It is submitted that the second time quoted amount for execution of contract work is below than the schedule of rates fixed by the respondents' company for the year 2006-2007. The respondents' company fixed the schedule of rates for each work and as per the lead chart published is above the rate offered by the petitioner's firm i.e., rate for convenience of earth sand, including loading, unloading and stocking. Though the rate offered by the petitioner's firm is very low as compared with the schedule of rate, the second respondent issued the impugned proceedings by dropping the tender enquiry on administrative reasons, which is illegal and arbitrary. It is further submitted that the respondents' company is an instrumentality of state acting contrary to the public good and public interest, unfairly, unjustly, unreasonably. The instrumentality of the state is expected to act fairly, justly and reasonably in a matter like contracts, but on the contrary the respondents acted arbitrarily, without any reasons or without following the

principles of natural justice.

It is further submitted that the petitioner's firm with a fond hope that it may get work from the respondents, approached the land owners for laying a road between river bed to approach BT road and executed necessary agreement with Ryots/pattadars, but to the utter shock, the second respondent issued the impugned proceedings dated 20.03.2007 vide reference No.CRP/CMC/ST/ENQ.354/2006/13079 informing that the tender enquiry was dropped on the administrative reasons. It is also submitted that the petitioner's firm has already invested huge amount, men and material/machinery with a fond hope that it may get the contract work, but on the contrary the impugned proceedings were issued by the second respondent and the same is illegal and void and contrary to the principles of natural justice. The petitioner further submits that no reasons were given in the impugned proceedings for dropping of the enquiry/execution of work, but the only reason mentioned for dropping the tender enquiry was administrative reasons. But to utter surprise, without giving any reasons, the respondents simply informed the petitioner that the respondents are not inclined to award the contract in favour of the petitioner's firm and there is no mention about the ground for which the respondents are dropping the award for contract work and the petitioner is also not in a position to know the grounds, such as the rate or the capability of executing the work by it. No opportunity was given to the petitioner before issuing the impugned proceedings. If any opportunity was given to the petitioner, it would be in a position to represent its case, and as such, lot of prejudice is caused to the petitioner.

It is further stated that the respondents' company is a Government company and is under obligation to pass an order, which is necessary to be a speaking order. The basic principle of natural justice was not followed in this case. As such, impugned order is liable to be set aside and the petitioner's firm is further entitled to get the tender offered by the

respondents, as no other person is competent with the petitioner and the rates are also quoted which are below the schedule of rates fixed for the year 2006-2007 by the respondents' company. During the negotiations, the petitioner specifically requested the tender committee to follow the schedule of rates fixed by the respondents' company for the year 2006-2007, but instead of following the company's schedule rates, issued the impugned proceedings, which is illegal.

It is also stated that the petitioner came to know that the second respondent is empowering the unit heads for calling local tenders for the above said work at the unit level, ignoring the corporate contract called earlier and if the respondents permitted to award contract at the unit level, the petitioner will be put to great irreparable loss. In such circumstances, praying for a relief specified supra, this Writ Petition had been filed.

In the counter affidavit filed sworn by the Chief General Manager (Purchase) of the respondents' company several of the averments have been denied. It is averred in paragraph 3 that at the outset, the petitioner is questioning the proceedings dated 20.03.2007 as illegal, and in this regard the contention of the petitioner is not true. Nowhere in the writ petition any case has been made out that a concluded contract has come into existence between the petitioner and the respondents. As there is no concluded contract between the parties, the entire writ petition is not maintainable. It is not open for the petitioner to question the action of the respondents in not proceeding further with the tender process and taking an administrative decision to drop the enquiry. In this regard, before any concluded contract comes into existence, it is always open for either party to withdraw from the contract and such right exercised by any of the contracting parties, is valid in law. Hence, on this ground, the writ petition is not maintainable.

Thus, a specific stand had been taken that there is no concluded contract between the parties and hence the Writ Petition is not maintainable. Further, it is stated that in response to the tender enquiry,

only a single bid was received, and during the course of tender process, the respondents felt that it was not feasible to proceed further and took a decision to drop the enquiry. Hence, the enquiry was dropped as the proceedings that took place before dropping of the enquiry did not culminate into a concluded contract. As the decision was taken to drop the enquiry a further decision was taken to return not only the EMD but also the tender fees paid by the petitioner.

It is also averred in paragraph 5 of the counter affidavit that the petitioner was awarded the works at Godavari Khani regarding excavation, loading, transportation and delivery of sand and also another contract to deliver sand to different mines at Sreerampur Area which are still subsisting but does not give any vested right to be awarded the present contract work which is not concluded between the parties. Further, it is stated that the petitioner has given various dates with regard to tender process but as already submitted they were all procedural in nature and the petitioner cannot question the decision of the respondents to drop the enquiry as no concluded contract has yet to come into existence. The petitioner cannot contend that the respondents have acted contrary to the public good and public interest when no concluded contract has come into existence. It is further stated that the reasons need not be given for dropping the enquiry as no prejudice has been caused to the petitioner until a concluded contract has been entered between the parties and still the contract is premature and yet to attain finality. Hence, giving an opportunity to the petitioner does not arise and the contentions raised in the paragraph 5 do not satisfy the well settled principles of law. Further, it is stated that the petitioner is put to strict proof that speaking orders will have to be passed whenever an enquiry is dropped. Also the petitioner is put to strict proof that principles of natural justice have to be followed. The petitioner is put to strict proof that tender committee is bound to follow the schedule of rates for the year 2006-2007 which practically applies to the civil contract but not purchase contract.

Further, it is stated that the petitioner is contending that respondents are empowering the unit heads for calling the local tenders at unit level and assuming though not admitting to be true, it is open to the petitioner to offer its participation in the said tenders.

The above are the respective stands taken by the parties. As already referred to supra, specific stand has been taken that there is no concluded contract between the parties, and in the light of the same, the very writ petition is not maintainable. Further specific stand had been taken that the enquiry was dropped as the proceedings that had taken place before dropping of the enquiry did not culminate into a concluded contract. It is also further clarified by taking a specific stand in the counter affidavit that the writ petitioner cannot claim any vested right whatsoever for awarding of present contract work since the same was not concluded between the parties. Further, it is stated that the various dates and also the procedural formalities of the process and other particulars may not assume much importance inasmuch as while the contract being at the premature stage and when it did not attain finality, the petitioner approached this Court by making such allegations. Hence, in the light of the same no relief can be granted. The learned Counsel for the writ petitioner placed strong reliance on **Ramana Dayaram Shetty v. The International Airport Authority of India** (supra), wherein the Apex Court observed as under.

“10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be

rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 L Ed 2d 1012 where the learned Judge said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in India in *A. S. Ahluwalia v. State of Punjab* (1975) 3 SCR 82 : (AIR 1975 SC 984) and in subsequent decision given in *Sukhdev v. Bhagatram*, (1975) 3 SCR 619 : (AIR 1975 SC 1331), Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pages 540-41 in Prof. Wade's *Administrative Law* 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the

executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State", there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in Democracy, Equality and Freedom "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege."

When the contract is still itself was not concluded, this Court is of considered opinion that the writ petition cannot be maintained. Even otherwise, in relation to the disputes pertaining to the contractual field, the writ Court to be slow in interfering, and hence, viewed from any angle, the Writ Petition is devoid of any merits, and the same shall stand dismissed. No costs.

(P.S.NARAYANA, J)

11.10.2007
vs

[\[1\]](#) AIR 1979 SC 1628